

JUDGING GENOCIDE: WHEN LAW SHATTERS THE GENOCIDAL MYSTIQUE

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RESUMO O presente trabalho discute os desafios impostos pelo crime de genocídio, no que diz respeito a punição e a reparação. Para tanto, discute-se a possibilidade do reconhecimento judicial do genocídio como forma de desmistificação do crime e a narrativa detalhada do crime como forma de desmitologização de seus agentes.

PALAVRAS-CHAVE: genocídio – direitos humanos

ABSTRACT Acknowledging that The crime of genocide is by nature hard to punish, and hard to repair, this paper deals with the Judicial recognition of genocide as the demystification of a crime and with a a detailed crime narrative as the demythologization of its perpetrators.

KEYWORDS: genocide – human rights

The crime of genocide is by nature hard to punish, and hard to repair. This is because of the peculiar criminal intent at the heart of it: the will to eliminate all or part of a precise group as such, for its own sake – not for what its members did or do. But genocide is a special crime also because of its amplitude: it is a form of mass murder, committed by thousands or millions of executioners on thousands or millions of victims – like it happened in Rwanda. To illustrate this reality and the challenge it represents for courts of justice – and before I start the core of my presentation –, I would like to give you a few numbers which tell the story by themselves – they show what a “catastrophe” any genocide is (“catastrophe” is what the word “shoah” means in Hebrew, by the way):

- In connection with the genocide of the Jews during the Second World War, Rudolf Hoess (he had been commander of the concentration camp in Auschwitz) was indicted for being responsible for the death of approximately four million persons, mostly Jews brought to the camp for direct extermination. How are regular courts of justice supposed to punish that? What is the weight of one man's life (Hoess) compared to the loss of four million lives? That was a very inhuman crime, for it to be punished by a "human" justice system.

- Now for Rwanda: in the space of ten weeks in 1994, almost one million Tutsis (Tutsis were the ethnic group "target" of the genocide) were murdered – men, women, children and old people alike. Machette knives were the weapon of choice. Up to half a million women and little girls were raped. Sixty percent of them were infected by the Aids virus deliberately. And on the executioners' side, hundreds of thousands persons have participated in the killings directly or indirectly. One hundred and fifty inmates have been incarcerated in the prisons after the genocide.

What can a legal system do when confronted with such situations? So little, it seems, that it is worth asking if it is useful to bring the matter to trial. But when you learn more about genocide, when you try to understand better what it does to a society and its individual members, when you listen to the testimonies of both survivors and killers, you come to realize that courts of justice have a unique role to play in "rebuilding" these societies after this hideous crime. What is more, no other institution – public or private – can play this role instead. Why? Because no other institution has the required status – the status of state bodies voicing the legal norm. The victims' ceaseless cries for justice – sometimes decades after the facts, like in Cambodia today – show clearly the importance of bringing genocide before state courts. Sure, everybody is aware that it is impossible to "judge" such a crime: too many victims, too many guilty parties, too great the crime, too irreparable the damages... But the constancy of these demands for justice makes us wonder: why? What can law, judges and their judgments say about the genocide that others don't say when they deal with it – sociologists, philosophers, politologists, politicians or church officials? What happens during these genocide trials, that gives the "judicial retelling" such political, social and symbolic force? It seems that what happens within courts and their organized rituals – those rituals involving lawyers, judges, witnesses and experts – is like an alchemy, a process of transmutation in the reverse. The mystique of the genocide crime is shattered through law's categories, rules of evidence and rules of procedure. When the judgment acknowledges the genocide crime for what it is – a delirious, deadly scheme that no ideology or propaganda can possibly justify –, this judgment brings its own demystification. The judgment also

undermines the pseudo-defense of necessity (self-defense) invoked by the perpetrators to justify themselves. In this way, the judgment recasts each participant in its true role: victims on the one side, criminals on the other. The demystification of the crime will be the subject of the first part of my conference (I). Furthermore, trial and judgment show to everyone how the criminals have failed in their criminal enterprise – that's what sitting in the 'accused' box means. The fact that surviving victims can testify against them implies that the genocide was not a complete success: the whole targeted group has not been eradicated. But most importantly, the trial shatters the genocidal power that prevailed during the perpetration of the whole genocide, because it places the accused in front of their victims and their judges, and demands that they justify themselves. In this manner, trial and judgment of genocide crimes are a demythologization process. This demythologization is the price to pay to allow victims to reintegrate a society they had been brutally excluded from by their persecutors. It will be detailed in the second part of my conference today (II).

1. JUDICIAL RECOGNITION OF GENOCIDE AS THE DEMYSTIFICATION OF A CRIME

To understand the weight of judicial statements when genocide is concerned, we must reflect a little on the very particular nature of this crime – especially in connection with the intent of the perpetrators and the means they use to reach their goal. I will talk about this first (A), in order to put in perspective the crucial role played by legal judgments dealing with genocide (B) and how it recasts each protagonist in its true role (C).

A. Genocide as the application of a deadly policy aiming at the extermination of a people

The genocide crime requires different elements to prepare it, among which three are essential. The first is to be found in the definition of genocide itself, the second lays in the means used to prepare it and the third, in the negationism that often follows in the wake of genocide.

So, the first component of the genocide points to the very definition of genocide itself and thus, to the identification of the targeted group. Genocide is traditionally defined as the will to eradicate, totally or partly, a specific group on the sole basis of the religious, ethnic or racial characteristic of its members. Those group members are thus threatened because of what they are, not because of what they do. They are no soldiers nor freedom fighters, and do not oppose the regime in power – such were the Armenians, the Jews, the Tutsis in Rwanda. They are civilians who did not even necessarily acknowledge the identity that was forced upon them by the murdering party in power.

The second crime element concerns the means used by the perpetrators to reach their aim. To exterminate a whole people is a vast criminal enterprise; it thus asks for the elaboration

of a true criminal state policy. A large political, administrative, judicial and economical structure has to be devised to that effect, and a whole society has to be prepared to engage in the perpetration of the crime. In this way, any genocide requires a huge planification before it actually happens. It is never a "spontaneous" explosion of popular rage; the greatest madness lays in the intent behind it. The genocide itself has to be meticulously prepared, and propaganda helps. To enlist the active or passive help of a large section of society in the perpetration of the crime, some "convincing" explanations are necessary – so that people can come to believe that the suppression of this neighbour, that colleague, this friend or parent is a vital necessity. Thus, propaganda always helps the preparation of genocides through a "dehumanization" process of the potential victims. The targets lose their fundamental rights and civil status. Their group becomes the enemy from within. It was in that manner that during the Second World War, Jews were called "vermin" by Nazi propaganda, which added that their blood was corrupted and threatened the "purity" of the German Aryan blood – not to speak of the so-called "Jewish-Franc Maçon conspiracy" supposedly in league with Russians against the German people. As for the Tutsis in Rwanda, they were deemed to be "roaches" (*inyenzi* in kinyarwanda language, *baratas* in Portuguese) and to belong to an "alien" race (were they not called the "white people" of Africa?). Furthermore, they were said to be spies for the rebel Tutsi army that had been trying to reclaim power from the Hutus for four years. Those made-up qualifications operated a scary change: the executioners became seen as victims and the victims, as the guilty parties. Therefore, putting to death the targeted group came to be perceived as an act of self-defense.

The third element required to make genocide effective is connected to the negationist discourse clinging to each genocide as a devious shadow. Few established parties in power are willingly ready to acknowledge they plan to eliminate radically a whole section of society – men and women, but also newborns, unborns, the sick and the old people. Even the arrogant German Nazis did not. But the murder of the targeted group must be total; the group must be killed in the past, in the present and for the future. Therefore, the murdering mob in power must not only lie about who is the victim, and who is the guilty party. They must also deny a genocide is happening. In this way, the genocidal intent is never truly named. In Germany, the Jews were just talked about in terms of "loads" (*carga* in Portuguese) to transport or "subjects to handle" in view of the "final solution" (*solução final*). In Rwanda, the murdering Hutus were encouraged by their government to "work" (*trabalhar*) ceaselessly together in the hills and swamps – "work" (*trabalhar*), not "kill" (*matar*). And those "knowing" about the crimes were deemed to be "secrets keepers". As if the genocide crime was not horrible enough, it is to be suffered in euphemistic lies. This changes radically the whole meaning of the search for justice and the importance of the testimonies.

Therefore, you understand that the first and foremost contribution justice and the courts can make in the aftermath of genocide is the official recognition, "beyond reasonable doubt" (as they say in the common law), of the reality of such a particular crime. They should also

establish the real roles truly played by the parties: the victims shown innocent by the judge, and the culprits pronounced guilty. This all happens through the process of criminal qualification.

B. The judgment or the recognition of the crime for what it truly is

What is criminal qualification? On the part of the legislator, it means to incriminate a certain behaviour in order to repress and punish it. On the part of the judge, it means checking if the qualification proposed by the prosecution is valid: are all the constitutive elements of the crime (legal, material and moral) present here? The qualification process is connected to the principle of legality in criminal law – legality of offenses and legality of sentences. This principle implies that no one can be accused of something and punished for it if no law has provided for this specific charge and this specific sentence in advance. It is only when the constitutive elements of a crime are present that it can be established and punished. Furthermore, only facts established according to the relevant rules of evidence can support a legal action. This explains why judicial truth does not always match factual or historical truth, because judicial truth is only the truth flowing from the evidence – nothing more, nothing less.

This is even more true in the case of a genocide, because the story of the crime as it appears in the judgment is a critical reconstruction of the facts, not only the version of the victims about what they endured. Because trial in court is a contradictory process, the judgment can only be the product of the confrontation of the different versions of the crime – by the victims, the accused and the witnesses. In court, the judge has to hear and question the different actors of the tragedy about how each one understood it. In other words, each accusation is heard simultaneously for the prosecution and for the defense. Every testimony must be corroborated to be considered evidence – “*unus testis, nullus testis*” (“one witness is no witness”) –, as conditional words subject to strict procedural rules. But the real purpose of those testimonies is to convince the judge, because testimonies in trials are not heard as life narratives, but as evidence. This may imply more suffering for the victim, whose affirmations are cross-examined and questioned.

This frame explains the specific weight of the judicial recognition of genocide as a crime, as opposed to the one that would come from historians, sociologists, politologists or politicians. Law and the courts can not edulcorate the meaning of the word genocide. Because the term commands a specific legal qualification, it can only be used when the constitutive elements of the crime are present and established. Therefore, when judges use the word “genocide”, it means all those elements have been verified according to the strict procedure and qualifications of criminal law. Medias may use the word in a rhetorical fashion, making it common place. Various groups may use it to discredit their opponents or to call the international community into action – but the law never. In this way, “*the legal discourse has the power to produce apparition or disparition [...] If the question of qualification matters [...], it is because the apparition or disparition of the guilty parties depends on how it is*

answered' (Tévanian, 2006: part 1, 2). The power of those legal words can be seen through the prudence and hesitations of some States when they had to issued statements as to what happened in Rwanda in 1994. Because the word "genocide" implies such drastic legal consequences (the need to prevent it and the need to intervene for the States parties to the *Convention on the prevention and repression of the crime of genocide*), spokespersons preferred to talk about "ethnic conflicts", or "tribal wars" to describe the situation in Rwanda. They were careful not to invoke a legal qualification heavy with consequences.

This criminal law logic also explains why judicial recognition of genocide is able, more than any other recognition by another authority, to counter the negationist discourse of the perpetrators. This is the reason why victims value so much the intervention of the courts. The victims' first need is to obtain the restoration of the truth in the eyes of everyone, even more than to tell their own story. An understandable quest for the truth when we recall what a Nazi officer told Jewish author Primo Levi in a concentration camp: *"It does not matter how the war ends: we already won it against you; none of you will be left to tell about it, and even if there were a few, nobody would believe them"*.

But the strength of the judgment lays not only in the fact that it recognizes the crime for what it is – a genocide –, it also lays in the identification of the actors in the crime for what they truly are. Thus, it gives back to each his own.

C. The reintegration of each actor in the reality of what he is

I have said that the success of a genocide depends in part upon its remaining hidden under more "politically correct" formulas. This art of camouflage is also used by the perpetrators of the genocide themselves. They manage to make the victim look like the guilty party, while themselves appear as pseudo-victims forced to use self-defense to protect themselves. In this way, any genocide rests from the start upon a lie, a distortion of reality. When judges and courts declare there was a genocide, they deconstruct this type of discourse. They show the falsehood of the allegations of "threat" and "conspiracy". They reveal the wild fantasy grounding the attempt to eradicate an entire group. They point out the intention of the executioners. In other words, they say who was the victim and who was the butcher. This is how judges demystify the crime and show it to everyone for what it truly was. Judgments replace the words of propaganda (counter-truths, veiled allegations and hidden meanings) by the words and categories of the law: murder, torture, rape, compulsory sterilizations, deportations, deprivation of fundamental rights, etc. Thus the courts unveil, according the rules of procedure and evidence, the true intent behind the genocide: the total or partial eradication of the targeted group.

Through this demystification process, judgments on the genocide do more than give to each its due – guilt to the accused, innocence to the victims; it gives birth to those persons in a legal sense in their respective legal roles: accused and victims of a crime. This explains why, when victims still try to obtain that past massacres be recognized as "genocides", it can not be put down as a mere "victim posturization" ("playing the victim's role"). Think

about Armenians people. To quote Tevanian, "*as a matter of fact, the status of victims, almost everybody recognizes it to Armenians, including the negationists. The problem, what we must fight for today – and what is fought for when seeking the recognition of a genocide – is not the fact that the victims be named as such, but the fact that the perpetrators be known as such. What should be said is why those persons are dead, those deaths that are acknowledged: were they victims of fate, of hunger, of thieves, of human wickedness, or the victims of a crime by a known perpetrator?*" (Tevanian, 2006: part 1, 3).

As far as the victims are concerned, and given the particular nature of the crime of genocide, it is essential that their innocence be reaffirmed. Because they were sentenced to death by the perpetrators for the mere reason they existed, and thus were totally innocent in the eyes of the law, they are what some have called "*absolute victims*" (Garapon, 2002: 128.). As Antoine Garapon says, the genocide is thus "*born precisely from the meeting of an action and an abstention, of a total aggression and an absolute passivity, [...] the category opposite to 'innocent' is not, here, 'guilty' but 'inoffensive'*" (Garapon, 2002: 126-127.).

But if courts of law demystify the crime, they also undo the myths it was trying to use during the genocide – this is the demythologization part, flowing from the fact that perpetrators are tried one by one. This decreases the myth of absolute power they tried to project during the events, and it will be the subject of my second part.

2. A DETAILED CRIME NARRATIVE AS THE DEMYTHOLOGIZATION OF PERPETRATORS

The criminal trial rests on a fundamental principle called the principle of "personality of offenses and sentences". It means that in order to have a criminal trial, individual culprits should be first identified. This prevents collective criminal suits, on the basis that they could end up in the arbitrary conviction of a whole group without ascertaining the exact culpability of each member. But how can it possibly be applied in the context of genocide?

A. The individualization of criminal suits based on collective crime: No possible shelter behind the "State" for accused

Remember that genocide is a collective crime. It relies upon the whole State apparatus, including courts of law which are used to legalize and legitimate the enterprise of extermination. This is particularly apparent in the case of the genocide of the Jews in Europe during the Second World War. The German State was used as a tool of extermination and proved particularly effective in doing so. But it is true also of the genocide of Tutsis in Rwanda. Because those massacres were performed using essentially crude farm weapons (such as "machete" knives), they required the participation of hundreds of thousands persons – killers, rapists, thieves, denounciators... It is now said in Rwanda that two or three million persons might have participated directly or indirectly in the slaughter. But then, how could

about one million persons be murdered in the space of ten weeks with crude weapons without such a widespread assistance? Any genocide, given its ultimate goal, has to be planned at a large and collective scale.

In this context, the principle of legality of offences and sentences I just mentioned hampers our comprehension of the genocide, because it can not be reduced to a collection of individual actions. How can the vast and complex conflict in Rwanda be reduced to the culpability of one man, such as the alleged Prime Minister at the time, Jean-Paul Kanbanda? How can the effectiveness of the capture and deportation of Jews all over Europe be absorbed in the sole guilt of ordinary-looking Adolf Eichmann? In other words, how can genocidal violence – which is supported by State structures and power – be reduced to a mere relationship between one torturer and one victim? The principle of legality seems ill-suited here. But on the other hand, fortunately, it allows a recognition of the crime in a very unique way.

Genocide may be collective by essence, but let's face it, it has to be performed on a one-to-one, individual basis. In court, every participant must assume responsibility for what he did and face the consequences – whether his role was that of a mastermind, an organiser, or a mere executioner. The individual freedom of choice ceases to be absorbed within the collective dimension – on the contrary, it is now the individual freedom of choice which must pay the price for its participation in the collective slaughter. This reversal of perspective is all the more necessary because anonymity is precisely what helped the tortfeasers in carrying out their actions – being anonymous helps: each criminal act seems only like a drop in a vast sea of crime. The more criminals they were, the easier it seemed. Besides, the presence of the group certainly helped galvanize the more timid participants. It is like when everybody is guilty, nobody is really guilty anymore. In this way, by putting to trial every accused individually, law and the courts snatch away the “group camouflage” or “group scapegoat”. Everybody must face his or her individual choices and deeds. So, it is true that the individual trial induces a distortion in our comprehension of the facts, and also that there is always a risk to “sacrifice” the accused to try to compensate for the enormity of the crime. But at the same time, the trial forces the participants to “*face the ordeal of being put in contact with the tragedy as a whole through being confronted with practical details of it*” (Garapon, 2002: 209).

The individualization process will also enable the judge to name both executioners and victims. This in turn will pull them out of the anonymity they were thrown in by the mass murder. The very nature of the crime asks for the exploration of the details of what happened, to “humanize” the facts and thus to rescue them from cold criminal statistics. Think about it: six million Jews killed in Europe by the Nazis; one million Tutsis in Rwanda fourteen years ago... Who were these persons? How did they die? How did they live? Who were their loved ones? What was their favourite pastime, music, sport? What was their job? Genocide is so huge a crime it is hard to see all the human, individual aspects of it – a fact the perpetrators were well aware of, and counted on to make the crime less “real”. This is why putting *this* accused to trial for torturing and murdering *those* specific persons in *such* specific circumstances helps. Witnesses will remember names, places, times; they make the crime less anonymous and

vague. Victims are given back a persona and a name. Thus wrote Elie Wiesel, a survivor of the Nazi concentration camps, at the trial of Nazi officer Klaus Barbie¹: *"Inside the kingdom of malediction built by the accused and his collaborators, all the Jewish prisoners had the same face, the same eyes; all were doomed in the same way. Sometimes, one felt it was always the same Jew that was killed everywhere for six million times"* (Khan, 1991 : 121). The victims of genocide are not anymore seen as this man, that woman, child, wise person, intellectual, farmer, friend, neighbour, colleague... They are not any more called Levi, Bettelheim, Altounian, Minassian, Rurangwa, Kayitesi... What identifies them is solely the element of identity that marked the targeted group: they were Jews, Tutsis, Armenians, Cambodians... Only the principle of personality of offenses and sentences, as applied by the judge, gives them back their full identity.

In the same way, it is only through this "rehumanization" process that it becomes possible to think about the crime and to punish it at a human level – even if no sentence nor any human form of reparation can match the inhumanity of the offense. This was said during the process of Adolphe Eichmann, another Nazi commander, in Jerusalem in 1961: *"The procedural setting reduces the multitude of facts through reorganizing, comparing and qualifying them (...) [And] when we thought that this trial would never end because endless by essence, we realized suddenly that a strange miracle had occurred: all was held and contained between the four walls of this district tribunal in Jerusalem judging Eichmann"* (Haim Gouri, 1961: 274). Thus, the trial itself already operates a demythologization of the crime, bringing it back within the bounds of the human comprehension.

But this demythologization process goes even further. When the accused are put to trial and asked to explain themselves, it shows the failure of their project, but also the loss of their genocidal power. The trial marks the end of absolute power and impunity over a whole society.

B. Justice v. Impunity: The trial as the moment of reckoning

Genocide is absolutely arbitrary; it is systematic and proceeds in total impunity. Thus are the victims absolutely alone. For them, *"the world is [then] divided between 'the ones above', the tortioners, masters, the political regime in place, and 'the ones below', those [...] who are to be enslaved and annihilated"* (Sironi, 1999: 34). One of the victims of Barbie said at his trial: *"I remained with Barbie for about three hours. He was the one who had the absolute power"* (Khan, 1991: 36). Because of course, during the genocide, the perpetrators not only place themselves above the laws; they also use the law to achieve their criminal goals. In Germany, the so-called "Nuremberg laws" edicted by the Nazis deprived the Jews of their citizenship, and were applied by the totality of the judicial institutions. In this way, and contrary to other more "ordinary" crimes, genocide does not aim at physical death only. It starts much earlier through the "civil death" of the targeted victims – what some have called a "death before the death". Hannah Arendt says that the victim goes through *"the absolute experience of not belonging to the world, which is one of the most radical and desperate human experiences"*. The victims feel they are each totally alone and abandoned by all. They interiorize not only terror, but also the belief in the all-mightiness of

the perpetrators. Given this, when the hour of the trial comes, those perpetrators are themselves made to feel the power of this law they tried to master for their own goals. They have now to defend themselves, to justify themselves, to try and absolve themselves – the time of reckoning has come. Alone in the accused box, they are far from this time when they could be heard saying, like one German soldier to Primo Levi: “*Here [in Auschwitz], there is no ‘why’ (‘Hier ist kein warum’ – ‘Aqui é não porque’)*” (Lévi, 1988: 29).

C. Alone in the accused box: A power-stripped criminal

The principle of the personality of offenses and sentences means that the accused appear before the judge alone and have to answer individually for their actions. They can not hide behind State institutions or the group any more. And compliance with orders given by authorities is no excuse. The justice dispensed by the courts functions on a one-to-one, individual guilt basis. In that perspective, it extracts times, spaces, figures and actions from the criminal mass to reconstruct the crime. True, this manner to handle genocide leads, as I said earlier, to reduce the magnitude of the crime. Through the trial lens, it becomes a collection of sordid and cruel facts, impossible to understand but human always. But as a positive counterpart, crimes detailed through the judicial process recover their reality: yes, those were the actions of mere men, not of some supra-humans as the implacable logic of the genocide may have led the victims to believe at the time.

The trial thus often focuses on unprepossessing figures sitting in the accused box. Adolf Eichmann was an arrogant and proud officer during the Second World War, always corseted in a perfect uniform, in charge of the whole deportation process of the Jews. What a contrast when to see him in the accused glass box in Jerusalem later. His face was shaken by nervous spasms as he listened to the horrifying testimonies. He tried vainly to explain he had no idea what would happen to those millions of persons he efficiently deported to the death camps. “I was just obeying orders”, “I do not hate Jews at all” – his previous grand posture seemed very far away². See also Jean Kambanda, who was the Prime Minister of Rwanda at the time of the genocide. He first confessed to his crimes – in a confused fashion –, then tried to deny his own confession because it did not help absolving him as he intended³. After all, he was “only” found guilty of preparing and organizing the slaughter of one million persons: how could a judge have refused to reduce his sentence?! He was very far, in any case, from the absolute power of life and death he and others used to enjoy during the massacre. Because of those falls from power, trials put life back in our comprehension of the genocide. A victim of Nazi officer Klaus Barbie, who testified at his trial, declared: “*In Lyon, everybody was afraid of Barbie. But (...) [here in the courtroom], the best-guarded prisoner of the country frightens only the officers in charge of security, because they fear a terror attack*” (Khan, 1991: 10). And another of his brothers-in-suffering cried out: “*Those cold eyes, this smiling mouth, this is the face we saw forty years ago. [...] Look at me Barbie, we have things to talk about... See, he closes his eyes and turns his head; he does not even dare to look at me in the eyes. He is a coward. Behold this everyone: this SS stripped of his armour, of his whip. This SS is only a coward now.*” (Khan, 1991: 96).

Here, what the trial shows of the genocide is the perfect “banality of evil” Hannah Arendt spoke about during the Eichmann trial in Jerusalem. A perfect banality flowing from the fact that the most horrid crimes appear eventually as having been perpetrated by mere men, not more sadistic or perverse than the average person, not even stronger or more intelligent. The inhumanity of the crime comes from its magnitude, its nature, from the sheer barbarism of the acts, from the absurd and irrational character of the genocidal intent, from the absolute arbitrariness in saying who should live and who should die. The inhumanity of the crime rarely flows from the persona of the accused.

It is true that the judicial process does not show the crime as a whole, in its total horror. But the re-humanization it operates is essential to shatter the mask of power which still exists when the trial starts – even if the genocide was not completely successful. With its hours of strict procedural routines, its specific logic, its lengths, repetitions, fastidiousness and tediousness, the trial helps reduce the formidable, almost mythical dimension of the crime and its perpetrators. Trial and judgment put an end to the myth of the all-mightiness of the participants to the genocide. They also put a stop to the radical and deadly powerlessness of the victims and of the society shattered by the genocide. They demythologize both the crime and its perpetrators, because their being in the accused box shows how they failed in their genocidal project. Svetan Todorov said that “*In order to judge someone, you must first defeat him*” (Osiel, 2006: 350). In this way, the testimonies of survivors are the “*obvious sign of the failure of total extermination*” (Piralian, 1994: 23), because testimonies in court are evidence for the prosecution and can help find the accused guilty, and because there are witnesses left to make their voice heard in court. This is why “*as long as the victim has not witnessed the judicial condemnation of his aggressor, the victim is condemned to feel an extreme loneliness flowing from the fact his moral experience is un-sharable: he can explain the facts, meet compassionate listeners, but the victim can only be recognized as such by judicial third parties*” (Piralian, 1994: 23). Desmond Tutu, the South-African bishop who presided the Commission “Truth and Reconciliation” after the fall of the apartheid regime, explains that “*those people that had been treated like dogs have now a past history recognized by the whole country. The victims have been presented with an official forum where they were able to tell their story. Not all of them did come. But those who came told us as soon as the first hearing: ‘we told our story to everywhere, but to have told it here freed us for the first time from the weight we were carrying’*” (« Pas d’amnistie sans vérité. Entretien avec l’archevêque Desmond Tutu », 1997: 66). Trial and judgment thus appear as the strongest denial opposed to genocidal murderers, while at the same time standing out as a major reference regarding negationism and the repetition of the events.

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NOTAS

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¹ Klaus Barbie was an SS German officer sent to France in 1942. Named the «butcher of Lyon», he ran the Gestapo in the region and set up the Jew and the members of the Resistance movement hunting. His trial opened in France in May 1987; he was accused of crimes against humanity (17). He was sentenced to life sentence.

² See the the record movie of Eichmann's trial in Jérusalem, Eyal Sivan, *Adolf Eichmann. The Specialist*, Israël, 1999.

³ *Procureur c. Jean Kambanda*; ICTR 97-23.